FOR MYSORE STATE

Govt. Pr.—27—100,000—21-8-53.

FINANCE /Pension (1948) Department.

P & F

MS.

SERIES.

G.O. No. 873

Dated 4-9-1948.

[Despatch Abstract.]

PROVIDENT FUND - Payment of P.F. amount in cases where the nominee predeceased subscriber - Advocate-General - Consulted - Papers - Recorded.

Copy of letter No.FDS.I.GA.4/166, dated the 23rd February 1948, from S.A.Vaneswar Esq., Accountant General, Madras, to the Secretary to the Government of Madras, Finance (Pensions) Department, Fort St. George, Madras.

---0---

Sub: Payment of Provident Fund amount in cases where the nominee predeceased subscriber.

***

I have the honour to invite a reference to the orders of Government noted in the margin* and to state that in all these cases the subscribers had, in their nominations made when they were unmarried nominated their mother to receive the General Provident Fund amount. The nominees predeceased the subscribers; but the nomination was not changed by the subscribers either on the death of the nominee or when the subscribers subsequently acquired In their memorandum No.17636.Pen.2, dated the 9th May 1944 (Finance Department) Government have held that a valid nomination once made by a subscriber to the Provident Fund can only be revoked by the act of the subscriber. As in these three cases the nominations were valid when they were made and were not revised by acts of the subscribers, they continue to be valid and the correct course will apparently be to pay the amount to the legal heirs of the nominee in accordance with the decision of High Court in I.L.R.59 Madras 855.

*1. G.O.Ms.No.1871 Revenue Department, dated 5-8-1947 regarding M.A.Majid, Revenue Inspector.
2. G.O.Ms.No.135, Home Department, dated 12-1-1948 regarding K.Mohammad Khan Head Constable.
3. G.O.Ms.No.4665 Home Department, dated 18-12-1947 regarding Kanna Pillai, Head Constable.

2. In the cases on hand, Government have however stated that under the rules, when a subscriber leaves a family, the amount has to be paid to the family notwithstanding the nomination in favour of the mother. The fact that this rule offends against the principle of the absolute right of the nominee enunciated in section 4(1) of the Provident Fund Act was already brought to the notice of Government - Vide this office letter No.Fds. 4.66/43.44/326, dated the 17th June 1944.

3. Again the decision of the High Court in (1946) 2 M.L.J. 248 has been quoted as authority in support of the order of Government in the case of Mr.M.A.Majid. The case of Mr.Srirama Rao Naidu dealt with in that decision of the High Court is, however, different, although there is no indication in the proceedings of that case that the decision turned on this difference. The subscriber had a family but he nominated three non-members to receive the General Provident Fund amount, suppressing the fact that he had a family. As there was a suppression of facts, the nomination was ab initio invalid, as a subscriber having a family could not under the rules nominate an outsider. The cases of Mr. Majeed and others are on a different footing in that the nomination made in favour of the mother in each case was valid as the subscribers were unmarried at that time and continued to be valid in the absence of action on their part to revise it at any subsequent date.

4. The law on the subject is as stated above, but if Government desire on grounds of equity to make payment in accordance with the orders already issued and if they are satisfied that these orders will hold good in a Court of Law, if contested, this office will act accordingly - Vide last Sentence of Mr.P.N.Rajagopal's letter No.Fds.4.66/43.44/326, dated the 17th June 1944.

P.T.O

An early reply is requested.

Sd. . . .
Accountant General

GOVERNMENT OF MADRAS.

Finance Department.

***

MEMORANDUM NO.11840 Pen-5, DATED 29TH APRIL 1943.

Sub: Payment of Provident Fund amount in cases where the nominee predeceased the subscriber - Advocate-General's opinion. @@@

The Government Solicitor, Madras is requested to obtain and forward to the Government the opinion of the Advocate General on the following typical case:-

2. A Government servant who is a subscriber to the General Provident Fund (Madras) being unmarried, nominates his mother to receive the balance in his Provident Fund in the event of his death. He thereafter [illegible] marries. He thereafter dies. To whom the balance of the Provident Fund to be paid - to his mother or to his widow?

3. There is no doubt that according to the rules framed by the Government under the Provident Funds Act, 1925, the amount should be paid to the widow. The mother is not included in the definition of family "in rule 2(c)". The proviso to rule 7(3) expressly states that nomination made under that sub-rule "shal be deemed to have been duly made ... only for so long as the subscriber has no family". The marriage of the subscriber should, therefore, have the effect of cancelling the previous nomination.

4. The Accountant General, however, has contended that the rule is ultra vires section 5(1) of the Act, and that the nomination of the mother must remain valid until altered by the subscriber, Section5(1) states:-

"Where any nomination, duly made in accordance with the rules of the Fund, purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber... the said person shall on the death of the subscriber become entitled, to the exclusion of all other persons, to receive such sum or part thereof, as the case may be, unless --

(a) such nomination as at any time varied by another nomination made in like manner or expressly cancelled by notice given in the manner and to the authority prescribed by those rules, or

(b) such nomination at any time becomes invalid by reason of the happening of some contingency specified therein -- and if the said person predeceases the subscriber or depositor, the nomination shall, so far as it relates to the right conferred upon the said person, become void and of no effect."

5. In the case in point, (1) nomination was duly made in accordance with the rule of the fund, as the subscriber was not married at the time of nomination,

(2) the contingency of the future marriage of the subscriber was not specified in the nomination.

6. Section 4(1) of the Act also directs that the sum should be paid "to any person nominated to receive it under the rules of the Fund." There is no doubt that the nomination in this case at the time it was made, was duly made in accordance with the rules.

7. It can, however, be contended that a nomination can cease to subsist in certain ~~xxxx~~ contingencies and that Government can make rules to such effect, despite the provisions of Sec.5. In A.I.R.1946 Bombay 1938, the point at issue was dealt with. It was there held that "the Act did not prohibit the making of rules in respect of nominations so as to make them conditional or subsisting on certain contingencies only and that the proviso to rule 7(3) was therefore intra vires. Thus in the case in point, the balance Should ~~shall~~ be paid to the widow. There is, however, no provision in the Act specifically empowering the Government to make such a rule.

8. The Advocate-General may be requested to advise whether the view of the Bombay High Court is correct and can be followed in Madras.

9. He may also be requested to state whether the same principle may be applied to cases which arose before the amendment to Sec.5 of the Act in 1946 i.e. where the subscriber died before the amendment was made. The relevant portion then ran:

> "any nomination duly made in accordance with the rules of the Fund which purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor, shall be deemed to confer such right absolutely, until such nomination is varied by another nomination made in like manner or is expressly cancelled by the subscriber or depositor by notice given in such manner and to such authority as is prescribed by those rules."

It does not appear that this amendment makes any difference to the point at issue, viz., whether rule 7(3) of the rules is ultra vires sec.5 of the Act or not

Sd/-
Secretary to Government.

To the Government Solicitor.
Madras.

(True copy)

Superintendent,
Madras Record Office.

KRVD.13.6.

15/6

NO.26.

OPINION.

Sub: Payment of Provident Fund amount in cases where the nominee pre-deceased the subscriber:

Ref: Memorandum No.11840 Pen-5 dated 29-4-1948, Finance Department.

@@@

My opinion is that the view taken by the Bombay High Court in A.I.R.1946 Bombay, 138 is correct and can be given effect to in Madras. The point that the Act does not contain any specific provision for making rules, does not appear to be of any force, since the frame work of the Act expressly contemplates the existence of rules. I quite agree that the rules however ought not to contain any provision inconsistent with the provisions of the Act itself, and therefore the only question for consideration would be, whether Rule 7(3) of the General Provident Fund (Madras) rules, can be said to run counter in any manner to section 5 of the Act. It will be observed that Section 5 itself refers to a nomination "duly made in accordance with the rules of the Fund"; and Rule 7 provides when a nomination shall be deemed to have been "duly" made. To my mind there is nothing illegal in the rule providing that in a certain contingency the nomination should be deemed to be non-existent. It is not a case of a cancellation, nor is it a case of the nomination becoming invalid by reason of the happening of some contingency specified in the nomination, but it is a case of there being no nomination at all.

With reference to the question raised in paragraph 9 of the Memorandum, I am of opinion that the amendment does not make any difference in the legal position.

Government of Madras.
Finance Department.

MEMORANDUM NO.11840 Pen.9, Dated the 28th June 1948.

***

Sub: Payment of Provident Fund amounts in cases where the nominee pre-deceased the subscriber.

Ref: From the Accountant General, No.FDS-IGA-4/166, dated 23-2-48.

The Government have considered the point raised by the Accountant General in his letter cited, in consultation with the Advocate General and hold that rule 7(3) of the General Provident Fund (Madras) Rules does not run counter in any manner to section 5 of the Provident Funds Act, 1925. Section 5 of the Act itself refers to a nomination "duly made in accordance with the rules of the Fund"; and rule 7 of the G.P.F.(Madras) Rules provides when a nomination shall be deemed to have been "duly" made. In the opinion of this Government there is nothing illegal in the rule providing that in a certain contingency the nominatinn should be deemed to be non-existent. This view is also supported by the decision of the Bombay High Court in A.I.R. 1946 Bombay 138. In the circumstances the Government do not consider that the orders in G.Os. viz., G.O.Ms.1871 Rev. dated 5-8-47, G.O.No.Ms.135 Home dated 12-1-48 and G.O.Ms.No.4665 Home, dated 18-12-47 require any modification.

Sd/- x x
Secretary to Government.

To the Accountant General,
Madras.

(True copy)

Superintendent,
Madras Record Office.

KRVD.13.6.

192/1516.

From

H.M.Small Esq., O.B.E., M.A., LL.B.,
Government Solicitor,
Madras.

To

The Secretary to the Government
of Madras,
Finance Department,
Madras.

No.1740 Dated 11th June 1948.

Received on 11-6-48.

Despatched on 15-6-48.

Forwarded with reference to

Memorandum No.11840 Pen-5, dated 29-4-48.

Sd.

Government Solicitor.

Copy to

1741. The Secretary to Government,
Legal Department, Madras.

Payment of Provident Fund amount in cases where the nominee predeceased subscriber.

From the Accountant General, letter No.FDS.I.G.A.4/166, dated 23-2-48.

In the three cases referred to in the Accountant-General's letter, the subscribers, as they were not married then, nominated their mother to receive the G.P.F. amount in the event of their death. The nominees predeceased the subscribers, but the nomination was not changed by the subscribers either on the death of the nominee or when the subscribers subsequently acquired a family.

After the death of these subscribers the question was raised as to the persons to whom their G.P.F. amounts should be paid. Under Section 5(1) of the Provident Fund Act, 1925 as amended by Central Act XI of 1946, if the nominee predeceases the subscriber, the nomination shall become null and void; but under the proviso to sub section (3) of that section, that section shall not operate to affect any case in which before the date of the commencement of the Amendment Act any sum has, under the G.P.F.Rules, become payable in pursuance of any nomination duly made in accordance with those rules. The three subscribers in question died before the date of the commencement of the Amendment Act. So with reference to the section referred to at A above it would appear that the nominations made by them should have been valid and the heirs of the nominees should have been paid the G.P.F. amounts. The Legal Department were, however of the following view:-

"The mother is not included in the definition of 'family' in rule 2(c). The proviso to rule 7(3) lays down that a nomination under that rule shall be deemed to have been duly made only so long as the subscriber has no family. The nomination of the mother was either initially invalid or ceased to be valid under the proviso to rule 7(3). There was no subsisting nomination in favour of a member of the family on the date of the death of the subscriber, and in such a case rule 30(i)(b) provides that the amount is payable to the members of the family notwithstanding any nomination in favour of a person other than a member of his family. The decision in (1948) 2 M.L.J. 248 supports this view".

2. The A.G. has, on the other hand, taken a different view. He is of opinion that a valid nomination once made by a subscriber to the Provident Fund can only be revoked by the act of the subscriber. As in these three cases the nominations were valid when they were made and were not revised by acts of the subscribers, the A.G. considers that the correct course will be to pay the amount to the Legal heirs of the nominees. He has also questioned the applicability of the decision of the High Court in (1946) 2 M.L.J.248 as authority in support of the order of Government in the case of Mr.M.A.Majid - vide Legal's opinion referred to at B above the reasons explained in paragraph 3 on pp.1-2 C.F.

3. For the reasons explained in para 2 above, on pp.1-2 above, the Accountant-General wants to know whether the payment may be made in accordance with the Governments orders already issued and whether these orders will hold good in a Court of Law, if contested.

4. The remarks of the Legal Department may, first be invited.

Intd. x x
22/3/48.

Fin.U.O.1840 Pen.
22/3/48.

egal.

P.T.O

N.L. 5.46

Legal Department.

The view taken by my learned predecessor and set out in the note of this Department on pages 4 and 6-7 of G.O. No.1871 Revenue dated 5-8-1947 appears to me to be correct. The decision in (1946) 2 M.L.J. 248 supports this view, and there is nothing to indicate that the decision of the High Court turned on the special circumstances of that case. The view of the High Court is also supported by another decision of the Bombay High Court in A.I.R. 1946 Bombay 138. There it was held that the right of a nominee under section 5 of the Provident Funds Act, 1925, is the right of a nominee under a valid and subsisting nomination and in order to find out what a valid and subsisting nomination is, one has to turn not to section 5 but to section 4 and that on the marriage of the subscriber, the nomination in favour of the subscriber's mother does not subsist. The proviso to rule 30(1)(a) of the General Provident Fund Rules specifically provides that the amount shall be payable only to a person who fulfils the character of a member of the family on the date of the death of the subscriber and rule 2(c) does not include mother in the definition of 'family'. The proviso to rule 7, sub-rule (3), explicitly states that a nomination made under that sub-rule "shall be deemed to have been duly made . . . . . only for so long as the subscriber has no family". It follows that when the subscriber acquires a family, the nomination can no longer be deemed to have been duly made in accordance with the rules. Section 5 of the Act as it stood before it was amended in 1946 and which is the one applicable, requires that the nomination must be one duly made in accorance with the rules of the Fund. That being so, it appears to me, even apart from the decisions, that the earlier view of this Department is correct, and does not require modification. However, if any doubts are still entertained, the Advocate-General may be consulted. The draft to the Advocate-General may be sent to this Department for perusal before issue.

Intd. x x
2/4/48.

Legal U.O.No.3625/48,
2-4-48.

Finance (Pen).

A draft Memo to the Government Solicitor is submitted for approval. Legal may see before issue.

I have discussed further with the Legal Secretary. He agreed that the decision in (1946)2 M.L.J. is not relevant to the point at issue. A revised draft to the Govt. Solicitor to obtain and forward the opinion of the Advocate-General is put up below. It may be sent to Legal for acceptance before issue.

Intd. x x
22/4/48.

Fin. U.O.No.11840 Pen-4,
22-4-48.

Legal Department.

Seen in Legal.

The slight alterations indicated in red ink on the draft may be made. It may be mentioned in this connexion that usually a reference of this type is made by official memorandum and not by letter.

Intd. x x
24/4/48.

Legal U.O.No.4917/48-1
24-4-48.

Fin.(Pen).

With reference to the remarks of the Legal Deptt. above, the draft has been suitably modified in pencil. For orders whether it may be issued as modified.

Intd. x x
29/4/48.

(Issued as O.M.No.11840 Pen-5, dated 29-4-48)

(From the Govt. Solicitor, Opinion No.26, dated 11-6-48).

Finance (Pen).

Please see this Department's Memo on pp.5-6 C [illegible] the opinion of the Advocate General on p.9 ibid.

2. The Advocate General has stated that the decision by the Bombay High Court in A.I.R. 1946, Bombay 138 is correct and can be given effect to in Madras. He has also held that the amendment (Central Act XI of 1946) to Section 5(1) of the Provident Fund Act, 1925 does not make any difference in the legal position. In the circumstances, in cases like the present where the deceased Government servant had nominated his mother, the balance of the Provident Fund will have to be made to his widow, ignoring the nomination made by the deceased which is(non-existent). As the orders issued in the G.Os. referred to by the A.G. are in accordance with ~~the~~ this view, they require no modification. The A.G. may be informed accordingly with reference to para 4 of his letter on p.2 c.f.

3. A draft memo is submitted for approval. Legal may see before issue.

Intd. x x
18/6/48.

Fin.U.O.11840 Pen-8
18-6-48.

Legal Department.

Seen in Legal.

Intd. x x
23/6/48.

Finance (Pen).

The draft Memo may now be issued.

Intd. x x
28/6/48.

Finance (Pen).

No further action is called for on this case. The papers may be G.O.Ms.No.873, dated 4-9-1948.

R E C O R D E D.

ABSTRACT: Provident Fund - Payment of Provident Fund ~~Amount~~ Amount in cases where the nominee predeceased subscriber - Advocate-General - Consulted - Papers recorded.

KRVD.25.6.

(True copy)

Superintendent,
Madras Record Office.